

These are the tentative rulings for civil law and motion matters set for Thursday, July 9, 2015, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, July 8, 2015. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

**NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

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**1. M-CV-0061442      DeCur, Donna T. vs. Ruddell, Kristie**

Plaintiff's motion to compel further responses to discovery is granted. Defendant shall provide further verified responses to special interrogatories, set one nos. 10, 11, 12, 13, and 14 on or before July 17, 2015. Plaintiff's request for sanctions is denied.

**2. M-CV-0061614      Treelake Village Homeowners Ass'n vs. Swanlake At Treelake**

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, such argument shall heard in Department 43:

Defendant's Demurrer to the Third Amended Complaint (TAC)

Preliminary Matters

As an initial matter, the court notes defendant's demurrer includes argument referencing to Exhibit C [Amended and Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Treelake Village] and Exhibit D [Declaration of Covenants, Conditions and Restrictions of Swanlake at Treelake Village Subassociation] without a request for judicial notice. Portions of defendant's arguments also refer to "facts" and "evidence" as establishing arguments raised in its demurrer. This is not the function of a demurrer. A demurrer tests the sufficiency of the pleadings. It does not involve the admission of evidence or findings of fact. (*Payne v. Rader* (2008) 167 Cal.App.4th 1569, 1575.) The court declines to consider these exhibits or defendant's arguments associated with these exhibits.

### Ruling on Requests for Judicial Notice

Defendant's request for judicial notice is granted pursuant to Evidence Code §452.

Plaintiff's request for judicial notice is granted as to Exhibits A, B, and C pursuant to Evidence Code §452. Plaintiff's request as to Exhibit D is denied as it is unclear whether the excerpts provided are part of a recorded document.

While the court takes judicial notice of these documents, it is mindful that "taking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning". (*Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374.)

### Ruling on Demurrer

Defendant's demurrer challenges the first cause of action for equitable indemnity and second cause of action for unjust enrichment. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, all properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Defendant asserts the TAC suffers from the same deficiencies that plagued each of plaintiff's prior pleadings. Specifically, plaintiff was the record owner of Common Area A as of May 3, 1995, which occurred prior to defendant's alleged annexation in May of 1996. A review of the TAC shows plaintiff has not remedied this underlying deficiency.

As seen in the judicially noticeable documents, the grant deed was executed on May 15, 1995 (defendant's RJN, Exhibit B) and the legal presumption created here is the deed was delivered and effective on this date. (Civil Code §§1054, 1055.) Plaintiff's conclusory allegations, that the grant deed was not delivered or accepted by plaintiff and plaintiff was unaware of the deed, do not create sufficient factual allegations to rebut this presumption. Plaintiff goes on to allege the recording of the declaration of annexation prior to the grant deed made Common Area A subject to defendant's CC&Rs and the fact that the declaration states the developer was the owner of the annexed property provides further evidence the grant deed was not delivered to plaintiff. (TAC ¶¶4, 5.) These allegations, however, are more argumentative than factual. They fall short of redressing the presumption of delivery on the effective date of the grant deed. A reading of the remainder of the allegations in the TAC provide a recitation of facts where plaintiff is allegedly unaware of its ownership, maintenance, or control status over Common Area A while further alleging maintaining and defending legal actions as if plaintiff owned and controlled the area. The result is a pleading with unclear, conclusory, and argumentative allegations that do not address the inconsistencies created by the grant deed (defendant's RJN Exhibit B). "The courts ... will not close their eyes to situations where a complaint

contains allegations of fact inconsistent with attached documents, or allegations contrary to facts which are judicially noticed.” (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) For these reasons, the demurrer is properly sustained.

This leaves the issue of whether plaintiff should be afforded another opportunity to amend its pleading. This is the fourth attempt by plaintiff to allege a viable cause of action against defendant. The court has seen the progression in the operative pleadings as plaintiff has moved from specifically alleging defendant had ownership of Common Area A to strained allegations that defendant should have known an alleged annexation gave defendant maintenance and control over Common Area A. In its most recent request for leave, plaintiff claims it can amend the TAC to allege further allegations of defendant’s maintenance and control over the Common Area A. These assertions, however, will not address the underlying deficiency that the court has repeatedly identified to plaintiff over the course of defendant’s challenges to its operative pleadings. Namely, plaintiff’s presumption of ownership over Common Area A prior to any alleged annexation of the area. Plaintiff makes no showing to redress this deficiency. Further, a review of the TAC does not establish the deficiencies may be remedied by an amendment. The demurrer is sustained without leave to amend as plaintiff has failed to demonstrate an ability to cure the defects in the TAC. (*Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

**3. M-CV-0063565      CBM Group, Inc. vs. Ingle, Natalie**

Appearance required on July 9, 2015, at 8:30 a.m. in Department 40.

**4. S-CV-0031742      Tarantino, Alessandra Gabriella vs. Sheehy, A. Macduff**

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, such argument shall be heard in Department 43:

Plaintiff’s Motion for Cost of Proof Sanctions

The motion is denied. Cost of proof sanctions are available where a party unreasonably denies a request for admission. (Code of Civil Procedure §2033.420(a).) The determination of whether cost of proof sanctions should be awarded falls within the sound discretion of the court. (*Bloxham v. Saldinger* (2014) 228 Cal.App.4th 729, 753-754.) Upon careful review of the papers submitted by the parties, the court determines defendant had a reasonable ground to believe he would prevail at the time the responses were given.

Defendant’s Motion to Strike the Cost Memo and Motion to Tax the Cost Memo

It is noted that defendant’s initial challenge to the cost memo is based upon timeliness. Plaintiff, citing to *Cardinal Health 301, Inc. v. Tyco Electronics Corp.* (2008) 169 Cal.App.4th 116, asserts the court may grant it relief from the untimeliness on its

own motion. There is, however, a significant difference between the facts of *Cardinal Health* and the current action. The appellant in *Cardinal Health* did not object to the timeliness of the respondent's cost memo as is seen here. The court is not inclined to grant such relief on its own motion without plaintiff addressing the circumstances surrounding the untimely filing or the factors for seeking relief. Based upon this, the court continues both motions to July 30, 2015 at 8:30 a.m. in Department 43 to afford plaintiff an opportunity to submit supplemental briefing addressing whether such relief should be afforded to her. Plaintiff's supplemental brief shall be filed and served on or before July 17, 2015. Defendant's supplemental brief shall be filed and served on or before July 24, 2015.

**5. S-CV-0033036            Leopold, Eric vs. Ford Motor Company**

Defendant Ford Motor Company's Motion for Summary Adjudication

As an initial matter, the court notes that defendant has filed a notice of order assigning coordination of proceedings and a notice of order assigning coordination judge in this action. The current action, however, is not listed as one of the cases to be included in the coordination proceeding and does not appear to affect the substance of the current action.

Defendant's motion is denied without prejudice. Upon review of the proofs of service, it appears defendant did not properly serve plaintiff's counsel of record, the O'Connor & Mikhov LLP law firm. Instead, the proof of service shows that a Michigan employee of defendant personally served only associated counsel for the Law Offices of Michael H. Rosenstein at the San Francisco Superior Court on April 15, 2015. As service for the motion appears deficient, defendant's request is denied without prejudice.

**6. S-CV-0033306            Ambroselli, Marco vs Anapolsky, Louis J.**

Defendant's Motion for Summary Judgment, or in the alternative, Summary Adjudication

Ruling on Request for Judicial Notice

Defendant's request for judicial notice is granted.

Ruling on Objections

Defendant's objection no. 1 to the Pearson declaration is sustained. Defendant's objections nos. 1, 2, 3, 4, and 5 to the Stein declaration are sustained. Defendant's objections nos. 1, 2, 3, and 4 to the Ambroselli declaration are sustained.

Ruling on Motion

The trial court shall grant a motion for summary judgment if "all the papers submitted show that there is no triable issue as to any material fact and the moving party

is entitled to a judgment as a matter of law.” (CCP§437c(c).) A party to the action may also move for summary adjudication if that party contends there is no merit to one or more of the causes of action. (CCP§437c(f)(1).) However, a motion for summary adjudication shall only be granted where it completely disposes of a cause of action. (*Ibid.*) In reviewing a motion for summary judgment, the trial court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) In this instance, and in light of the court’s ruling on defendant’s objections, plaintiff has failed to establish a triable issue of material fact. The undisputed facts, based upon the lack of admissible evidence, establish decedent feared the plaintiff (Defendant’s SSUMF Nos. 10-20); decedent died before executing any formal trust documents, establishing a formal trust, or evidencing any intention of establishing a trust (*Id.* at Nos. 23-29); and decedent never transferred any portion of his property in favor of plaintiff (*Id.* at No. 30). In light of these undisputed facts, based upon the lack of admissible evidence, there exists no triable issue of material fact as to the first cause of action for declaratory relief; second cause of action for breach of the implied covenant of good faith and fair dealing; or third cause of action for breach of oral trust. For these reasons, the motion is granted.

**7. S-CV-0034586            Epic HR, Inc. vs. Alves, Steven G.**

Cross-Defendants’ Demurrer to the First Amended Cross-Complaint (FACC) and Joinder to Demurrer

Ruling on Request for Judicial Notice

Cross-Defendants’ request for judicial notice is granted.

Ruling on Demurrer

The demurrer is overruled. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff’s allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The FACC, when read as a whole, alleges sufficient facts to support the third, fourth, fifth, and eighth causes of action.

An answer or general denial shall be filed and served on or before July 17, 2015.

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## Plaintiff's Motion for Release of Legal Files

### Ruling on Request for Judicial Notice

Plaintiff's request for judicial notice is denied as the request was made with the reply papers and defendant was not afforded a sufficient opportunity to respond. (see *Alliant Ins. Services, Inc. v. Gaddy* (2009) 159 Cal.App.4th 1292, 1307-1308.)

### Ruling on Motion

The current request stems from circumstances involving a corporation and a former sole shareholder, officer, and director. The corporation, plaintiff Epic HR, Inc., seeks the return of its client file from the law firm of Hefner, Stark & Marois, LLP (HSM), which includes a request for the return of the following:

- 1) All drafts of agreements between 2011 and 2013 where Epic was a party;
- 2) All letters, emails, and communications with or relating to Epic's shareholders, officers, directors and employees, including defendant Steven Alves;
- 3) All engagement agreements with Epic;
- 4) All invoices sent to Epic from the HSM firm for work performed between January 1, 2010 and July 31, 2013;
- 5) All corporate documents related to Epic;
- 6) All source code disks concerning and/or relating to Epic that were sent to the HSM firm by Richard Derzaw in October 2012;
- 7) All documents concerning Epic's intellectual property and proprietary rights;
- 8) All files pertaining to litigation to which Epic HR was a party; and
- 9) Other documents in HSM's papers/electronic files relating to Epic as of July 31, 2013

It is of import to highlight that an attorney has an affirmative duty to return a client's file upon request. (California Rules of Prof. Conduct, Rule 3-700(d); see *Academy of California Optometrists v. Superior Court* (1975) 51 Cal.App.3d 999; *Weiss v. Marcus* (1975) 51 Cal.App.3d 590.) There can be no dispute that any of Epic's client files in HSM's possession must be returned to the client. HSM does not dispute this point and makes the affirmative representation, under the penalty of perjury, that Epic's client files have been returned to Epic's current counsel of record. (Griffin declaration ¶¶29, 30.) The court accepts this representation to be true. The issue in dispute here is whether the client files related to defendant Steven Alves should be considered part of Epic's client file. The court determines that these documents do not fall under the ambit of Epic's client file.

To support its request for release of Mr. Alves' files, Epic relies heavily on joint client representation and Evidence Code §962. Joint clients are two or more persons who retain an attorney on a matter of common interest to all of them. (*Roush v. Seagate Technology, LLC* (2007) 150 Cal.App.3d 275, 284.) “ ‘In such a situation, the attorney has two clients whose primary, overlapping and common interest is the speedy and successful resolution of the claim and litigation.’ [Citation.] Each of the joint clients

holds the [attorney-client] privilege protecting their confidential communications with the attorney”. (*Ibid.*) Where the joint clients are later parties in a civil proceeding, neither may claim the attorney-client privilege against the other. (Evidence Code §962.) The key issue in this instance is whether Epic and Mr. Alves were joint clients for the period of time subject to Epic’s current request. The parties do not cite to any legal authority directly on point and the court has not located any such case law. The case of *Roush v. Seagate Technology, LLC* (2007) 150 Cal.App.3d 275, however, provides some guidance when analyzing joint client representation and common interests of the parties. The conclusory recitation of a party claiming joint client representation is not sufficient. (*Roush v. Seagate Technology, LLC* (2007) 150 Cal.App.3d 275, 285-286.) The facts of the relationship are the essential point in making such a determination. (*Ibid.*) Upon review of the supporting and opposing declarations, the court determines that beginning around April of 2011, Epic and Mr. Alves developed diverging interests where the HSM firm made it expressly clear that it was representing Mr. Alves in a separate capacity in order to protect his personal interests, which were separate and apart from those of Epic. (Griffin declaration ¶¶5-27.) This sufficiently refutes the existence of joint client representation. Epic is not entitled to release of Mr. Alves individual client files as they fall under the attorney-client privilege. For the reasons, the motion is denied.

Cross-Defendant Gotham Enterprises & Affiliates, LLC’s (Gotham’s) Motion for Leave to File Cross-Complaint

Ruling on Request for Judicial Notice

Cross-Complainant’s request for judicial notice is granted.

Ruling on Motion

The motion is granted. The court may permit a party to file a compulsory cross-complaint at any time during the course of the action upon a showing of good faith. (Code of Civil Procedure §§428.50(c), 426.50.) Gotham has shown good faith in bringing the motion to warrant granting the request.

The cross-complaint shall be filed and served on or before July 17, 2015.

Cross-Defendant Herbert Feinberg’s Motion for Trial Preference

The motion is denied without prejudice. The court must grant a petition for trial preference from a person over the age of 70 where the moving party establishes (1) a substantial interest in the action as a whole and (2) the health of the moving party is such that preference is necessary to prevent prejudice. (*Civil Code section 36(a).*) The moving cross-defendant has sufficiently shown a substantial interest in the action. However, he has not sufficiently established his health is such that preference is necessary to avoid prejudice. The court declines to grant the request until such time as the moving cross-defendant is able to submit sufficient evidence to support the request.

### Cross-Complainant's Motion to Continue Trial and Extend Discovery Cut-Off Dates

The motion is granted in its entirety as the moving cross-complainant has established sufficient good cause to continue the trial date. (CRC Rule 3.1332(c).) He has also made a sufficient showing to extend the discovery cut-off date to follow the continued trial date under CCP§2024.050(b).

The trial is continued to January 4, 2015 in a department to be assigned. The parties are to report to jury services. The civil trial conference is continued to December 18, 2015 at 8:30 a.m. in Department 42. The mandatory settlement conference is continued to December 11, 2015 at 8:30 a.m. The parties are to report to jury services. The discovery cut-off date is extended to follow the continued trial date.

The court notes, however, that this short continuance is granted keeping in mind that cross-defendant Herbert Feinberg may file a motion for preference at any time there is evidence of an adverse change in the current condition of his health.

### Cross-Complainant Steven Alves' Nine Discovery Motions

The court notes that there are currently nine discovery motions set for the current hearing and all are brought by Mr. Alves. It is also noted that Mr. Alves has one additional discovery motion set for next Thursday, July 16, 2015 at 8:30 a.m. in Department 40. The court continues the nine pending motions to be heard in conjunction with the one outstanding motion set for July 16, 2015.

However, the court is concerned by the sheer volume of discovery motions currently pending in this single case. The motion paperwork alone spans eight volumes of the court file. It is not an exaggeration when the court states the motions filed in this case have taken the scheduling slots for half of the total amount matters that may be set on any given civil law and motion calendar. Considering the current posture of the case; the limited judicial resources available to dedicate a single law and motion calendar to the discovery disputes of a single case; and the probability that these motions are merely the beginning of the discovery disputes that will be brought by the parties, the court is contemplating the appointment of a discovery referee in this action. The issue of appointment of a discovery referee is continued to July 16, 2015. The parties may file and serve concurrent supplemental briefing as to their respective positions regarding the appointment of a discovery referee on or before July 14, 2015 at 9:00 a.m. The supplemental briefs, however, must also include the names of three potential discovery referees for the court's consideration if it were to make such an appointment. The parties may also meet and confer on the matter to submit a joint list if they wish.

### **8. S-CV-0034762                      Stroup, James, et al vs. William Lyon Homes, Inc.**

Plaintiffs' motion for consolidation is granted. Placer Court Case Stroup v. William Lyon Homes, SCV-34762, is consolidated with Placer Court Case Cadena-Gomez v. William Lyon Homes, SCV-35455. Stroup v. William Lyon Homes, SCV-

34762, shall be the lead case and the parties shall use this case number for all future filings.

**9. S-CV-0035286                      Weimer, Robert, Jr. vs. Nationstar Mortgage, LLC, et al**

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard in Department 43:

Defendants' Demurrer to the Second Amended Complaint (SAC)

Ruling on Request for Judicial Notice

Defendants' request for judicial notice is granted pursuant to Evidence Code §452.

Ruling on Demurrer

The current demurrer is brought by defendants Nationstar Mortgage and U.S. Bank. They challenge all six causes of action in the SAC, alleging each is deficiently pled. The court's review is guided by well-established legal principles. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The court keeps this in mind in reviewing the SAC.

The first and second causes of action are claims for intentional misrepresentation and negligent misrepresentation respectively. The elements for intentional misrepresentation are “(1) the defendant represented to the plaintiff that an important fact was true; (2) that representation was false; (3) the defendant knew that the representation was false when the defendant made it, or the defendant made the representation recklessly and without regard for its truth; (4) the defendant intended that the plaintiff rely on the representation; (5) the plaintiff reasonably relied on the representation; (6) the plaintiff was harmed; and, (7) the plaintiff's reliance on the defendant's representation was a substantial factor in causing that harm to the plaintiff.” (*Perlas v. GMAC Mortg., LLC* (2010) 187 Cal.App.4th 429, 434.) The elements for a negligent misrepresentation claim are “ ‘(1) the misrepresentation of a past or existing material fact, (2) without reasonable ground for believing it to be true, (3) with intent to induce another's reliance on the fact misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting damage.’ [Citations omitted.]” (*National Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Integrated Services Group, Inc.* (2009) 171 Cal.App.4th 35, 50.)

In support of both the first and second causes of action, plaintiff alleges defendant Nationstar misrepresented his ability to qualify for a HAMP loan in an attempt to extend

the loan modification process and ultimately foreclose on the property. (SAC ¶¶52-64.) The specific misrepresentation alleged by plaintiff is that a Nationstar representative, Janine Richardson, told plaintiff “he was eligible to apply for a HAMP loan modification”. (Id. at ¶26.) Even accepting these pled allegations as true, as the court must, they are insufficient to support the misrepresentation claims in the first and second causes of action. First, the factual allegation is insufficient as a material misrepresentation. The allegation merely states that a representative informed plaintiff he could *apply* for HAMP modification, not that plaintiff would *qualify* for such a loan modification. Second, the allegations do not sufficiently show how plaintiff could justifiably rely upon a statement that he could *apply* for a modification, let alone how such reliance on this statement would cause plaintiff harm. The final deficiency stems from the overall pleading of the allegations. The SAC retains factual allegations for parties and theories that are no longer subject to the current litigation. This tends to confuse the misrepresentation claims asserted by plaintiff. For example, the SAC includes allegations that Bank of America promised to provide plaintiff with a loan modification. (Id. at ¶¶18-20.) The implication in the misrepresentation claims is that these representations by Bank of America are part of an “overall scheme” by the defendants to delay the loan modification process. (Id. at ¶49.) However, plaintiff also alleges that defendant Nationstar expressly informed plaintiff that a new loan modification process was necessary after it assumed servicing of the mortgage (Id. at ¶25), which tends to negate the existence of an “overall” scheme. Plaintiff also fails to clarify how these prior representations by former servicers tie into the current representation, focusing solely upon Ms. Richardson’s statement that plaintiff could apply for a HAMP loan modification. (Id. at ¶¶52-58.) For all of these reasons, the first and second causes of action fail.

The third cause of action is a claim for negligence. A negligence action requires a showing of duty, breach of duty, proximate cause, and damages. (*Artiglio v. Corning Inc.* (1998) 18 Cal.4th 604, 614.) A lender, however, is generally only liable for negligence where it “actively participates” by exceeding its scope “beyond the domain of the usual money lender”. (*Nymark v. Heart Fed. Sav. & Loan Assn.* (1991) 231 Cal.App.3d 1089, 1096.) The allegations in the SAC fall short of establishing any activity on the part of defendants that go beyond the scope of a normal financial institution. Plaintiff alleges the defendants had a duty since they failed to act reasonably during the loan modification process. (SAC ¶¶65-68.) These allegations are conclusory in nature and fail to sufficiently state facts demonstrating defendants acted beyond their normal scope. Moreover, the allegations do not sufficiently show any breach or causation on the part of the moving defendants. Plaintiff alleges in conclusory fashion that he was forced to submit multiple applications to different locations. (Id. at ¶¶26.) As alleged in the SAC, the mortgage and servicing transferred to the moving defendants on April 1, 2014. (Id. at ¶24.) The notice of trustee’s sale was recorded on August 4, 2014. (Defendants’ RJN Exhibit F.) The allegations in the SAC simply do not provide sufficient facts to establish what occurred during this four-month period of time that would equate to unreasonable actions on the part of the moving defendants. Thus, the negligence claims is also insufficiently pled.

The fourth cause of action asserts a trespass to land claim. Trespass is the unlawful interference with the possession of property. (*Mangini v. Aerojet-General Corp.* (1991) 230 Cal.App.3d 1125, 1141.) “The essence of the cause of action for trespass is an ‘unauthorized entry’ onto the land of another.” (*Civic Western Corp. v. Zila Industries, Inc.* (1977) 66 Cal.App.3d 1, 16.) To support this claim, plaintiff alleges that Nationstar hired Cyprexx to change the locks on the property while he was in the middle of the loan modification process and while plaintiff was out of town on business. (SAC ¶29.) The deficiency in the allegations stem from their conclusory nature in addition to the lack of factual allegations that defendants were not authorized to enter onto the property. Plaintiff had defaulted on his mortgage payments back in 2009. (SAC ¶¶17, 18.) A notice of trustee’s sale was recorded on August 4, 2014. (Defendants’ RJN Exhibit F.) The SAC is completely silent on whether defendants lacked the authority under the note and deed of trust to enter onto the property in light of the five-year default and pending foreclosure sale. The fourth cause of action also fails.

The fifth cause of action seeks declaratory relief. Declaratory relief only exists where there is an actual controversy and not an abstract or academic dispute. (Code of Civil Procedure §1060; *Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 746-747.) The SAC alleges an actual controversy exists based upon deficiencies in the securitization of the note and deed of trust. (SAC ¶¶30-34, 73-83.) Such allegations are insufficient to claim an actual controversy. (see *Jenkins v. JP Morgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497.) Furthermore, plaintiff’s reliance upon *Glaski v. Bank of America, N.A.* (2014) 218 Cal.App.4th 1079 is unpersuasive as the case has been highly criticized has inconsistent with California law and incorrectly applying New York law. (see e.g., *Sandri v. Capital One, N.A.* (Bankr. N.D. Cal. 2013) 501 B.R. 369, 374-375 [discussing how *Glaski* unpersuasively departs from California jurisprudence]; *Rajamin v. Deutsche Bank National Trust Co.* (2d Cir. 2014) 757 F.3d 79, 90 [rejecting *Glaski* as inconsistent with other courts’ interpretations of New York statute]; *Siliga v. Mortgage Electronic Registration Systems, Inc.* (2013) [borrower has no standing to challenge assignment of deed of trust]; *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 272 [same].) As such, the fifth cause of action fails to withstand the demurrer.

The final cause of action claims violations under the UCL. “The UCL does not proscribe specific activities, but broadly prohibits any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising. ...By proscribing ‘any unlawful business practice,’ section 17200 ‘borrows’ violations of other laws and treats them as unlawful practices that the unfair competition law makes independently actionable. Because section 17200 is written in the disjunctive, it establishes three varieties of unfair competition-acts or practices which are unlawful, or unfair, or fraudulent. In other words, a practice is prohibited as ‘unfair’ or ‘deceptive’ even if not ‘unlawful’ and vice versa.” [Citations and quotations omitted.] (*Puentes v. Wells Fargo Home Mortg., Inc.* (2008) 160 Cal.App.4th 638, 643-644.) As plaintiff has been unable to sufficiently allege any underlying unlawful, unfair, or fraudulent activities in the other causes of action, the sixth cause of action also fails.

This is plaintiff's third attempt to plead viable claims against the moving defendants. While plaintiff requests leave to amend, he merely concludes that any defects may be cured with an amendment. A mere statement is not enough to grant leave to amend. Plaintiff bears the burden of demonstrating how the complaint may be amended to cure the defects therein. (*Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302.) He has failed to meet this burden. For these reasons, the demurrer is sustained without leave to amend.

**10. S-CV-0035356                      Halicki, Halina, et al vs. Morrison Homes, Inc.**

Defendant Taylor Morrison of California's Demurrer to the Second Amended Complaint (SAC)

Ruling on Request for Judicial Notice

Defendant's request for judicial notice is granted in its entirety.

Ruling on Demurrer

A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) Nonetheless, "[t]he courts ... will not close their eyes to situations where a complaint contains allegations of fact inconsistent with attached documents, or allegations contrary to facts which are judicially noticed." (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) "Thus, a pleading valid on its face may nevertheless be subject to demurrer when matters judicially noticed by the court render the complaint meritless." (*Ibid.*) The court reviews the SAC keeping these principles in mind.

The sole assertion raised by the moving defendant in challenging the SAC is that plaintiffs have failed to sufficiently allege facts that they are released from the pre-litigation procedures set forth in Civil Code section 895 et seq., which are also referred to as SB800 pre-litigation procedures. Plaintiffs' claim they are not required to plead such allegations since the SAC alleges only common law causes of action and, as such, there is no basis to require plaintiffs to affirmatively plead an exemption from the SB800 pre-litigation procedures. Plaintiffs' contention, however, ignores their prior pleading in the original complaint and first amended complaint (FAC), which specifically pled facts that created the inquiry into the applicability of the SB800 pre-litigation procedures. This began with the original complaint, filed on October 17, 2014, where plaintiffs alleged that their first, second, and fifth causes of action were applicable "only as to plaintiffs not subject to California Civil Code §896". (Complaint pp. 4:3, 6:5, 10:21.) These allegations specifically identify that the claims of some unidentified plaintiffs are subject

to the SB800 pre-litigation procedures. Plaintiffs reaffirm this assertion with a conclusory allegation that impliedly all “[p]laintiffs gave and/or attempted to give DEVELOPER DEFENDANTS due and timely notice of the defective quality of the above mentioned items”, further raising the issue of whether some, if not all, of their claims pled in the original complaint were subject to the SB800 pre-litigation procedures. (Complaint ¶15.)

When plaintiffs filed their FAC on December 16, 2014, they reiterated the same allegations that some unidentified plaintiffs were not subject to the SB800 pre-litigation claims as to the first, second, and fifth causes of action. (FAC pp. 4:10, 6:12, 11:3.) Despite the allegations that only some of the plaintiffs may be subject to the SB800 procedures, plaintiffs again alleged that presumably all plaintiffs gave or attempted to give notice to defendant of the purported construction defects. (FAC ¶15.) Once again, the factual allegations as pled by the plaintiffs raised the issue of whether their causes of action were subject to the SB800 pre-litigation procedures and subjected the FAC to a successful challenge by demurrer.

In plaintiffs’ third incarnation of their operative pleading, they specifically remove the allegations that only some of the plaintiffs are subject to the SB800 pre-litigation procedures. They now allege that the SB800 addendum entered into by plaintiffs did not obligate them to comply with the pre-litigation procedures where their claims do not plead violations of functionality. (SAC ¶¶9, 10.) Even after making this conclusory allegation, plaintiffs proceed to allege that they still “gave and/or attempted to give DEVELOPER DEFENDANTS due and timely notice of the defective quality of the above mentioned items”, which tends to contradict the inapplicability of SB800. (SAC ¶17.) To reiterate, “[t]he courts ... will not close their eyes to situations where a complaint contains allegations of fact inconsistent with attached documents, or allegations contrary to facts which are judicially noticed.” (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) Plaintiffs, however, would have the court do just this. Plaintiffs’ factual allegations in the original complaint and FAC shaped the inquiry of whether their causes of action were subject to the SB800 pre-litigation procedures. Simply put, plaintiffs created this issue with their prior pleadings. The court cannot turn a blind eye to their prior allegations and review the SAC in a vacuum. Plaintiffs’ previous allegations specifically called into question whether their causes of action were subject to the SB800 pre-litigation procedures. Despite being afforded an opportunity to address these prior allegations and the inconsistencies they created, plaintiffs simply removed them and alleged in a conclusory fashion that SB800 was inapplicable. The SAC provides no facts to explain this removal or inapplicability. Plaintiffs’ position equates to having the court review only the allegations within the SAC while ignoring the prior inconsistencies raised in the original complaint and FAC. The court declines to do so. In light of this, defendant’s demurrer to the entirety of the SAC is sustained.

The remaining issue to address is whether the demurrer should be sustained without leave to amend as requested by defendant. The trial court has discretion to sustain a demurrer with or without leave to amend. (*Martin v. Bridgeport Community*

*Association, Inc.* (2009) 173 Cal.App.4th 1024, 1031.) Plaintiff bears the burden of demonstrating how the complaint may be amended to cure the defects therein. (*Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302.) A demurrer will be sustained without leave to amend absent a showing by plaintiff that a reasonable possibility exists that the defects may be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) It is worth noting plaintiffs do not request leave to amend. They assert the SAC is not deficiently pled since plaintiffs are not required to expressly plead the inapplicability of the SB800 pre-litigation procedures where they allege only common law claims. As previously discussed, this is an inaccurate characterization of the factual allegations pled in plaintiffs' complaint, FAC, and SAC. Since plaintiffs provide no discussion as to how their deficiencies may be remedied, the court must look to the pleadings to determine whether the defects are curable. The court presumes the facts alleged in the complaint and in the moving papers state the strongest case for the plaintiffs. (see *Live Oak Publishing Co. v. Cohagan* (1991) 234 Cal.App.3d 1277, 1286.) In light of the deficiencies in the SAC and the prior pleadings, it appears plaintiffs are unable to cure the deficiencies regarding the SB800 pre-litigation procedures. Instead of addressing the previous deficiencies and inconsistencies in the pleadings, plaintiffs merely removed the allegations in an attempt to eliminate the issue and ignore their previous allegations implying application of SB800. Essentially, plaintiffs request the court ignore their attempts to plead around the issue by eliminating allegations from the SAC. This tends to show the SAC is not amenable to an amendment. For these reasons, the demurrer is sustained without leave to amend.

Defendant Taylor Morrison of California's Motion to Stay Action and Compel Compliance with SB800

In light of the court's ruling on the moving defendant's demurrer, the motion is dropped as moot.

**11. S-CV-0035455                      Cadena-Gomez, Alexandra, et al vs. William Lyon Homes, Inc.**

Plaintiffs' motion for consolidation is granted. Placer Court Case Stroup v. William Lyon Homes, SCV-34762, is consolidated with Placer Court Case Cadena-Gomez v. William Lyon Homes, SCV-35455. Stroup v. William Lyon Homes, SCV-34762, shall be the lead case and the parties shall use this case number for all future filings.

**12. S-CV-0035649                      Pacific Gas and Electric Co. vs. DF Properties, et al**

The motion to consolidate and the motion for prejudgment possession are continued to July 14, 2015 at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob pursuant to the June 30, 2015 ex parte order.

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**13. S-CV-0035650 Pacific Gas and Electric Co. vs. Previte, Jack, Trustee**

The motion to consolidate and the motion for prejudgment possession are continued to July 14, 2015 at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob pursuant to the June 30, 2015 ex parte order.

**14. S-CV-0035652 Pacific Gas and Electric Co. vs. Baseline 80 Investors, LLC**

The motion to consolidate and the motion for prejudgment possession are continued to July 14, 2015 at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob pursuant to the June 30, 2015 ex parte order.

**15. S-CV-0036040 Hammack, Paul, et al vs. The Pexa Group, Inc.**

Defendant's motion for enforcement of order is denied. Defendant offers no legal authority to support the current request, which appears better suited through relief sought through contempt proceedings.

**16. S-CV-0036070 De Thiersant, Jean vs. Select Portfolio Servicing, Inc., et**

Defendants Select Portfolio Servicing (SPS) and Deutsche Bank's Demurrer to the Complaint

Ruling on Request for Judicial Notice

Defendants' request for judicial notice is granted.

Ruling on Demurrer

The demurrer is sustained without leave to amend. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.) As such, all properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1153.) The moving defendants demur to the first, second, third and fourth causes of action. A careful review of these causes of action shows that each is deficiently pled. The allegations in the first, second, third, and fourth causes of action address the actions and misrepresentations of defendant JPMorgan Chase. The allegations do not sufficiently address any actions, inactions, or misrepresentations made on the part of the moving defendants to support any of plaintiff's claims. The court deems plaintiff's failure to oppose the demurrer as an abandonment of plaintiff's claims against the moving defendants and sustains the demurrer without leave to amend. (*Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20.)

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**These are the tentative rulings for civil law and motion matters set for Thursday, July 9, 2015, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, July 8, 2015. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.**